

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

AN ACT relating to taxation and revenue; providing amendments to the sales and use tax laws as specified; providing for voluntary licensing; providing definitions; providing for enforcement procedures; providing for bad debt procedures; providing timeline procedures for local optional taxes; providing conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 39-15-107.3 is created to read:

39-15-107.3. Voluntary licensing and monetary allowances offered under the streamlined sales tax agreement.

(a) Any vendor who licenses to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with terms of the streamlined sales and use tax agreement shall not be subject to audit prior to the date of licensure provided the vendor was not licensed in this state and licensing occurs within twelve (12) months of the effective date of the streamlined sales and use tax agreement. The vendor shall not be assessed for uncollected sales or use tax together with penalty or interest for sales made during the period the vendor was not licensed in this state, provided licensing occurs within twelve (12) months of the effective date of this provision. This provision shall not apply to any vendor who has received notice of the commencement of an audit and the audit is not finally resolved including any administrative and judicial processes. The voluntary licensure provision shall not be available for sales or use taxes already paid or remitted to the state or for taxes collected by the vendor. The provisions of this section

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

shall be fully effective absent fraud or intentional misrepresentation of a material fact so long as the vendor continues to license and continues collection and remittance of applicable sales or use taxes for a period of not less than thirty-six (36) months following his initial licensure as a vendor. The voluntary licensure provision shall only apply to sales or use taxes due from a vendor acting as a seller and not as a purchaser.

(b) A certified service provider and user of any technology model approved by the department who collects the Wyoming sales and use taxes shall be granted a monetary allowance for collecting the taxes as provided in the streamlined sales and use tax agreement. Any allowance shall be funded entirely from taxes collected under the technology models and shall be based on the contracted amount between the governing board and the service providers.

Section 2. W.S. 39-15-101(a)(ix) and by creating new paragraphs (xxiii) through (xxxviii), 39-15-104 by creating a new subsection (g), 39-15-105(a)(vi)(B), 39-15-107(a)(x), 39-15-109(c), 39-15-203(a)(i)(A), (ii)(B) and (iii)(C), 39-16-101(a)(vi), 39-16-104 by creating a new subsection (f), 39-16-105(a)(vi)(A) and 39-16-203(a)(i)(A) and (ii)(C) are amended to read:

39-15-101. Definitions.

(a) As used in this article:

(ix) "Tangible personal property" means any-all personal property not real or intangible that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

prewritten computer software; and includes any controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

(xxiii) "Certified automated system" means software certified under the streamlined sales and use tax agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction;

(xxiv) "Certified service provider" means an agent certified under the streamlined sales and use tax agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(xxv) "Computer" means an electronic device that accepts information in a digital or similar form and manipulates it for a result based on a sequence of instructions;

(xxvi) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(xxvii) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(xxviii) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages;

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

(xxix) "Durable medical equipment" means equipment including its repair and replacement parts which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury;

(D) Is not worn in or on the body;

(E) Does not include "mobility enhancing equipment".

(xxx) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(xxxi) "Intangible personal property" includes:

(A) Money and cash on hand including currency, gold, silver and other coin, bank drafts, certified checks and cashier's checks;

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

(B) Money on deposit;

(C) Accounts receivable and other credits;

(D) Bonds, promissory notes, debentures and other evidences of debt;

(E) Shares of stock or other written evidence of ownership;

(F) Judgments for the payment of money;

(G) Annuities and annuity contracts.

(xxxii) "Lease" or "rental" means any transfer of possession or control of tangible personal property for consideration for a fixed or indeterminate period of time. A lease or rental may include future options to purchase or extend the lease or rental. "Lease" or "rental" shall include any agreement covering a motor vehicle or trailer where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1). The definitions in this paragraph shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other applicable provisions of federal, state or local law. "Lease" or "rental" shall not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

(B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price which does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments; or

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time, with the condition that the operator is necessary for the equipment to perform as designed. For purposes of this subparagraph, an operator shall do more than maintain, inspect or set up the tangible personal property.

(xxxiii) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser;

(xxxiv) "Mobility enhancing equipment" means equipment including its repair and replacement parts which:

(A) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility;

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

(D) Does not include "durable medical equipment".

(xxxv) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The "over-the-counter-drug" label includes:

(A) A drug facts panel; or

(B) A statement of any active ingredient with a list of the ingredient contained in the compound, substance or preparation.

(xxxvi) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

(xxxvii) "Prewritten computer software" means computer software including any prewritten upgrade, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

designed and developed to the specifications of a specific purchaser remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(xxxviii) "Prosthetic device" means a replacement, corrective or supportive device including repair and replacement parts for the device, worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or

(C) Support a weak or deformed portion of the body.

39-15-104. Taxation rate.

(g) Any vendor or certified service provider relying on an incorrect rate, boundary or jurisdictional information provided by the department in its tax rate database required under the streamlined sales and use tax agreement shall not be held liable for any under collection of tax caused by the department's error.

39-15-105. Exemptions.

(a) The following sales or leases are exempt from the excise tax imposed by this article:

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

(vi) For the purpose of exempting sales of services and tangible personal property which are essential human goods and services, the following are exempt:

(B) Sales of the following tangible personal property sold under a prescription: drugs for human relief excluding over-the-counter-drugs, insulin for human relief and any syringe, needle or other device necessary for the administration thereof, oxygen ~~and oxygen concentrators~~ for medical use, blood plasma, prosthetic devices, hearing aids, ~~crutches, wheelchairs,~~ eyeglasses, contact lenses, mobility enhancing equipment, durable medical equipment and any assistive device. As used in this subparagraph, "assistive device" means any item, piece of equipment or product system, as defined by department rule, which is used to increase, maintain or improve the functional capabilities of an individual with a permanent disability, excluding any medical device, surgical device or organ implanted or transplanted into or attached directly to an individual.

39-15-107. Compliance; collection procedures.

(a) Returns, reports and preservation of records. The following shall apply:

(x) Taxes paid on gross receipts represented by accounts found to be worthless may be credited against subsequent liability of the vendor. The vendor shall not take the credit for any bad debt until he has used the customary debt collection procedures as documented in writing by the vendor and has written off the debt; or until the debt qualifies as a bad debt under 26 U.S.C. section 166 excluding financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

seller until the full purchase price is paid, any expenses incurred in attempting to collect any debt, and repossessed property. If any ~~such~~ account is thereafter collected by the vendor, a tax shall be paid upon the amount collected. The amount collected shall be applied proportionally first to the taxable price of the property or service and the sales tax thereon, and then to interest, service charges and any other charges. Should the bad debt exceed the taxable sales for a subsequent period the vendor may request a refund of the tax on the bad debt from the department so long as the claim is made within three (3) years of the date of sale. A certified service provider under W.S. 39-15-401 through 39-15-408 acting on behalf of a vendor may claim the bad debt allowance for the vendor and shall remit the credit or refund received to the vendor. Should the bad debt apply to more than one (1) state, the debt may be allocated between the affected states.

39-15-109. Taxpayer remedies.

(c) Refunds. The following shall apply:

(i) Any tax, penalty or interest which has been erroneously paid, collected or computed shall either be credited against any subsequent tax liability of the vendor or refunded. No credit or refund shall be allowed after three (3) years from the date of overpayment. The receipt of a claim for a refund by the department shall toll the statute of limitations. All refund requests received by the department shall be approved or denied within ninety (90) days of receipt. Any refund or credit erroneously made or allowed may be recovered in an action brought by the attorney general in any court of competent jurisdiction;

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

(ii) Any tax erroneously paid by a taxpayer shall be refunded by the vendor who originally collected the tax. No cause of action shall lie against the vendor by the taxpayer until not less than sixty (60) days elapse following a request by the taxpayer for a refund from the vendor.

39-15-203. Imposition.

(a) Taxable event. The following shall apply:

(i) The following provisions apply to imposition of the general purpose excise tax under W.S. 39-15-204(a)(i):

(A) Except as provided by subparagraph (F) of this paragraph, no tax shall be imposed under W.S. 39-15-204(a)(i) until the proposition to impose the taxes is submitted to the vote of the qualified electors of the county, and a majority of those casting their ballots vote in favor of imposing the taxes. A county may impose both taxes authorized in W.S. 39-15-204(a)(i) and (ii), but the proposition to impose each tax shall be individually stated and voted upon. Except as otherwise provided, excise taxes imposed under this paragraph shall commence ~~on the first day of the second month~~ as provided by W.S. 39-15-207(c) following the election approving the imposition of the tax;

(ii) The following provisions apply to imposition of the lodging excise tax under W.S. 39-15-204(a)(ii):

(B) No tax shall be imposed under W.S. 39-15-204(a)(ii) until the proposition to impose the taxes is submitted to the vote of the qualified electors of the county or of a city or town if the proposition is to impose

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

the tax only city wide or town wide, and a majority of those casting their ballots vote in favor of imposing the taxes. A county may impose both taxes authorized in W.S. 39-15-204(a)(i) and (ii), but the proposition to impose each tax shall be individually stated and voted upon. Except as otherwise provided, excise taxes imposed under this paragraph shall commence ~~on the first day of the second month~~ as provided by W.S. 39-15-207(c) following the election approving the imposition of the tax;

(iii) The following provisions apply to imposition of the specific purpose excise tax under W.S. 39-15-204(a)(iii):

(C) No tax shall be imposed under this paragraph until the proposition to impose the tax for specific purposes in specific amounts is approved by the vote of the majority of the qualified electors voting on the proposition. The amount of revenue to be collected and the purpose or purposes for which it is proposed to be used shall be specified in the proposition. The election shall be held in accordance with W.S. 22-21-101 through 22-21-112. Any debt created may also be repaid, in whole or in part, by a property tax levy if general obligation bonds are authorized by the electors. Any excise tax imposed under this subsection shall commence ~~on the first day of the second month~~ as provided by W.S. 39-15-207(c) following the election approving the imposition of the tax, except that it shall commence on the first day of any subsequent month following the receipt of tax funds in the approved amount by any tax previously imposed under this subsection as provided by subparagraph (E) of this paragraph. Unless terminated earlier by the sponsoring entities pursuant to subparagraph (G) of this paragraph, the tax shall terminate ~~on the last day of the month following the month in which~~

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

as provided by W.S. 39-15-207(c) when the amount approved by the electors is collected;

39-16-101. Definitions.

(a) As used in this article:

(vi) "Tangible personal property" means all personal property ~~not real or intangible~~ that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and prewritten computer software and includes any controlled substance as defined by W.S. 35-7-1002(a)(iv) which is not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

39-16-104. Taxation rate.

(f) Any vendor or certified service provider relying on an incorrect rate, boundary or jurisdictional information provided by the department in its tax rate database required under the streamlined sales and use tax agreement shall not be held liable for any under collection of tax caused by the department's error.

39-16-105. Exemptions.

(a) The following purchases or leases are exempt from the excise tax imposed by this article:

(vi) For the purpose of exempting sales of services and tangible personal property and services which are essential human goods and services, the following are exempt:

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

(A) Purchases of the following tangible personal property sold under a prescription: drugs for human relief excluding "over-the-counter-drugs", insulin for human relief and any syringe, needle or other device necessary for the administration thereof, oxygen ~~and oxygen concentrators~~ for medical use, blood plasma, prosthetic devices, hearing aids, ~~crutches, wheelchairs,~~ eyeglasses, contact lenses, mobility enhancing equipment, durable medical equipment and any assistive device. As used in this subparagraph, "assistive device" means any item, piece of equipment or product system, as defined by department rule, which is used to increase, maintain or improve the functional capabilities of an individual with a permanent disability, excluding any medical device, surgical device or organ implanted or transplanted into or attached directly to an individual.

39-16-203. Imposition.

(a) Taxable event. The following shall apply:

(i) The following provisions apply to imposition of the general purpose excise tax under W.S. 39-16-204(a)(i):

(A) Except as provided by subparagraph (F) of this paragraph, no tax shall be imposed under W.S. 39-16-204(a)(i) until the proposition to impose the taxes is submitted to the vote of the qualified electors of the county, and a majority of those casting their ballots vote in favor of imposing the taxes. A county may impose both taxes authorized in W.S. 39-16-204(a)(i) and (ii), but the proposition to impose each tax shall be individually stated and voted upon. Except as otherwise provided, excise taxes imposed under this paragraph shall commence ~~on the first~~

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

~~day of the second month as provided by W.S. 39-16-207(c)~~
following the election approving the imposition of the tax;

(ii) The following provisions apply to
imposition of the specific purpose excise tax under W.S.
39-16-204(a) (ii):

(C) No tax shall be imposed under this
subsection until the proposition to impose the tax for
specific purposes in specific amounts is approved by the
vote of the majority of the qualified electors voting on
the proposition. The amount of revenue to be collected and
the purpose or purposes for which it is proposed to be used
shall be specified in the proposition. The election shall
be held in accordance with W.S. 22-21-101 through
22-21-112. Any debt created may also be repaid, in whole or
in part, by a property tax levy if general obligation bonds
are authorized by the electors. Provided, any excise tax
imposed under this subsection shall commence ~~on the first~~
~~day of the second month as provided by W.S. 39-16-207(c)~~
following the election approving the imposition of the tax,
except that it shall commence on the first day of any
subsequent month following the receipt of tax funds in the
approved amount by any tax previously imposed under this
subsection as provided by subparagraph (E) of this
paragraph. Unless terminated earlier by the sponsoring
entities pursuant to subparagraph (G) of this paragraph,
the tax shall terminate ~~on the last day of the month~~
~~following the month in which~~ as provided by W.S.
39-16-207(c) when the amount approved by the electors is
collected;

ORIGINAL HOUSE
BILL NO. 0014

ENROLLED ACT NO. 3, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

Section 2. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____
DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk